

AGENDA BILL APPROVAL FORM

Agenda Subject: Ordinance No. 6284; Resolution No. 4530; Resolution No. 4531		Date: December 8, 2009
Department: Information Services	Attachments: Ordinance No. 6284; Resolution No. 4530; Resolution No. 4531	Budget Impact:

Administrative Recommendation:

City Council conduct a public hearing on Addendum IV to the non-exclusive franchise agreement between the City of Auburn and Comcast of Washington IV.

Background Summary:

Ordinance No. 6284 amends Chapter 13.36, CATV Systems, of Title 13, Water, Sewers, and Public Utilities, of the Auburn City Code to more clearly define the term Gross Revenues as related to CATV Systems.

Resolution No. 4530 extends the Comcast Franchise agreement for an additional five years from date of execution. It also institutes the requirement for a yearly technical audit by Comcast, defines PEG support and Channel locations, provides provisions for Annexations, cables to public buildings and includes language for competitive equity.

Resolution No. 4531 removes the institutional network from the franchise agreement and institutes a lease that gives the City of Auburn full rights and access to this network at \$1 per year for 50 years.

T1221-1
O4.1.4, A3.14

Reviewed by Council & Committees: <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. COUNCIL COMMITTEES: <input checked="" type="checkbox"/> Finance <input checked="" type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other _____	Reviewed by Departments & Divisions: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Fire <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Information Services </div> <div> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div>
--	--

Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____		Call for Public Hearing ____/____/____
---	--	--

Councilmember: Cerino Meeting Date: December 21, 2009	Staff: Rempher Item Number: II.A.1
--	---

ORDINANCE NO. 6 2 8 4

AN ORDINANCE OF THE CITY OF AUBURN,
WASHINGTON, AMENDING CHAPTER 13.36, CATV
SYSTEMS, OF TITLE 13, WATER, SEWERS, AND
PUBLIC UTILITIES, OF THE AUBURN CITY CODE

WHEREAS, Chapter 13.36, CATV Systems, of Title 13, Water Sewers,
and Public Utilities, is the code that governs the application of Cable
Communications Systems; and

WHEREAS, changing circumstances make it necessary to amend the
existing Chapter 13.36.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,
WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Amendment to City Code. Subsection 13.36.020 R of
Chapter 13.36, "CATV Systems" of Title 13, entitled "Gross Revenues" is hereby
amended so that the definition of "Gross Revenues" reads as follows:

R. "Gross Revenues" means any and all receipts and revenues
~~received derived~~ directly or indirectly from all sources, other than transactions
related to real property receipts, by a franchisee, not including any taxes on
services furnished by a franchisee, imposed on any subscriber or used by any
governmental unit, agency or instrumentality and collected by a franchisee for
such entity; provided that, not uncollectible debts are not considered as revenue
in this definition. by Franchisee, or by Franchisee's Affiliates, as defined in the
federal Cable Act, from the operation of the Franchisee's Cable System to
provide Cable Services in the Franchise Area. Gross Revenues include, by way
of illustration and not limitation, monthly and other fees charged Subscribers for
Cable Services including Basic Service, Expanded Basic Service, any expanded
Tiers of Cable Service, other Tiers of Cable Service, optional Premium Service,
Video on Demand, pay-per-view, per-program Channels, Cable Service
installation, disconnection, reconnection and change-in-service fees, Leased
Access Channel fees, remote control rental fees, late fees and administrative
fees, consideration received by the Franchisee from programmers for carriage of
Cable Services on the Cable System and recognized as revenue under generally
accepted accounting principles (GAAP), revenues from rentals of converters or
other Cable System equipment, advertising sales revenues (including local and a

pro rata share of regional and national advertising carried on the Cable System in the Franchise Area) net of commissions due to Franchisee's unaffiliated advertising agencies that arrange for the advertising buy, revenues from program guides, additional outlet fees, revenue from the sale or carriage of other Cable Services, revenues from home shopping, and a fairly apportioned percentage of fees associated with bundled services (i.e. late fees, NSF fees, etc.). Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Franchisee that are imposed directly on any Subscriber or user by the State, Grantor or other governmental unit and that are collected by the Franchisee on behalf of said governmental unit; or (iii) the PEG Fee as required by this Franchise. The Franchise Fees are not a tax and are therefore included in Gross Revenues.

This definition shall be construed so as to include all Gross Revenues to the maximum extent permitted by federal and state law, except to the extent specifically excluded in this section, and encompasses revenues that may develop in the future, whether or not anticipated. If a statutory change in state or federal law or a decision of the FCC or a court of competent jurisdiction expands or contracts the categories of revenue available to the City for the Franchise Fee assessment beyond those permitted under this definition as of the Effective Date, this Franchise may be amended to include or exclude any such category of revenue in the definition of Gross Revenues under this Franchise, provided that the City amends the Franchises of all other similarly situated multichannel video provider over which the City has jurisdiction and authority to impose such fees.

Section 2. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. Effective date. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

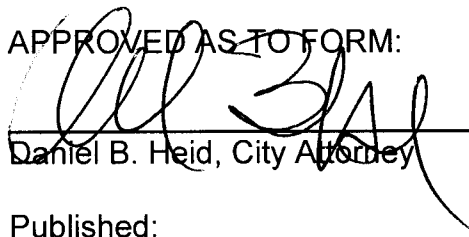
APPROVED: _____

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

Published: _____

RESOLUTION NO. 4 5 3 0

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF AUBURN, WASHINGTON, AUTHORIZING
THE MAYOR AND CITY CLERK TO EXECUTE
ADDENDUM IV TO THE CABLE FRANCHISE
AGREEMENT BETWEEN THE CITY OF AUBURN
AND COMCAST OF WASHINGTON**

WHEREAS, the City of Auburn entered into a Non-Exclusive Franchise Agreement with TCI Cablevision pursuant to Resolution 2409, approved on May 3, 1993; and

WHEREAS, certain provisions of Section 5 and Section 8 of the Franchise were amended in Addendum I to the Franchise which was approved June 15, 1998 pursuant to Resolution 2972; and

WHEREAS, the date for construction and operation of a public access facility was extended from July 1, 1999 to September 1, 1999 in Addendum II to the Franchise which was approved June 21, 1999 pursuant to Resolution 3096; and

WHEREAS, this date was further extended to February 1, 2001 in Addendum III to the franchise which was approved November 1, 1999 pursuant to Resolution 3122; and

WHEREAS, Comcast of Washington IV, Inc. ("Comcast") is the successor in interest to TCI Cablevision and currently holds the above Franchise; and

WHEREAS, the Franchise expired on midnight June 30, 2008; and

WHEREAS, the City and Comcast have continued to operate under the Franchise while they have been in discussions regarding the terms under which the Franchise could be extended; and

WHEREAS, the City Council finds that the terms set forth in the attached Addendum III to the Franchise, which extends the Franchise for an additional five years, are in the best interest of the City and its citizens,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, HEREBY RESOLVES as follows:

Section 1. The Mayor and City Clerk of the City of Auburn, Washington, are hereby authorized to execute Addendum IV to the Non-Exclusive Franchise Agreement Between the City of Auburn, Washington and Comcast of Washington IV to Operate a Cable Television System Within the City of Auburn, Washington, a copy of which is attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2009.


CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

EXHIBIT 'A'

ADDENDUM IV TO THE NON-EXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF AUBURN, WASHINGTON AND COMCAST OF WASHINGTON IV TO OPERATE A CABLE TELEVISION SYSTEM WITHIN THE CITY OF AUBURN, WASHINGTON

This ADDENDUM IV regarding extension of the Franchise Agreement and making various changes to the Agreement between the City of Auburn, Washington, and Comcast of Washington IV, and approved by the City Council pursuant to Resolution No. 2409 on May 3, 1993 and amended on June 11, 1998, and further amended on June 15, 1999, is hereby entered into between the CITY OF AUBURN, a Washington municipal corporation, hereinafter referred to as the "CITY" and Comcast of Washington IV, Inc. a Washington corporation, hereinafter referred to as "OPERATOR."

NOW, THEREFORE, the parties agree as follows:

Section I. For purposes of this Addendum IV, "Franchise" shall mean the Franchise Agreement approved by the City Council pursuant to Resolution No. 2409, as amended by Resolution No. 2972 and Resolution No. 3096.

Section II. Section 2, Length of Franchise, of the Franchise is hereby amended to read as follows:

Section 2 Length of Franchise.

This Franchise will be continued for five (5) years following the execution date this Addendum IV.

Section III. Section 5, Future Provision, of the Franchise is hereby amended to read as follows:

Section 5. Future Provisions.

A. The CITY and the OPERATOR acknowledge that the CITY should be provided with a cable system that has the same

EXHIBIT 'A'

general capabilities and capacity as those provided other cities served by the OPERATOR in the King-Pierce-Snohomish County area of the State of Washington.

B. The CITY may, at its discretion, require that the OPERATOR provide such interactive services as addressability, security, computer interaction, banking, shopping, voice and transmission, High Definition Television (HDTV), fiber optic and other such features, as well as upgrades capable of carrying at least fifty-four (54) channels, within the CITY within twenty-four (24) months of the time the OPERATOR provides any of the same services identified above to a preponderance of a system;

1. Within the City of Seattle system, or;
2. Within any adjacent community, or;
3. Within Forty percent (40%) of the municipalities in the King, Pierce, and Snohomish Counties.

C. Notwithstanding the above provisions, the OPERATOR shall in any event complete the upgrade to fifty-four (54) channels and have the capability of implementing these enhanced services within forty-eight (48) months from the effective date of this AGREEMENT.

D. Prior to implementation of any such service, the OPERATOR may request a public hearing by the City Council to discuss the benefits of said features to the citizens of the CITY. Upon a finding by the City Council that such features are reasonably required to meet community needs, taking into consideration the expense of providing such services and the potential costs to subscribers, the City Council may require the implementation of such features in accordance with the provisions of this AGREEMENT. If the Council deems it necessary, it may, at its own option by a majority vote, extend the time requirements established in this section.

E. Additionally, the OPERATOR, upon completion of the upgrade or by the expiration of the forty-eight (48) month period as prescribed herein, shall provide, maintain and operate a public access studio within a radius of eight (8) miles of the City Hall, or at a location mutually agreeable by all parties. Such facilities shall be subject to approval by the CITY as suitable. Such approval shall not be unreasonably withheld.

F. OPERATOR shall annually provide to the City a certification signed by its Vice President of Engineering for the State of Washington, or other senior engineer as agreed upon by the City, certifying that its policies and procedures comply with all applicable laws and codes and that all known maintenance issues have been repaired in compliance therewith.

EXHIBIT 'A'

Section IV. Section 6, Access Channels, of the Franchise Agreement is

hereby amended to read as follows:

Section 6. Access Channels

A. Upon completion of the upgrade conditions, the CITY shall be provided with three (3) access channels, one of which shall be capable of broadcasting live from City Hall. The CITY may initially share a common public access channel with other communities; however, the CITY may elect, at its option, to provide programming over an individual public access channel for the CITY's sole use.

B. Additional channels over and above those referenced above shall be made available for CITY purposes when any of the three (3) designated channels is in use for access purposes with programming during fifty percent (50%) of the hours between 10:00 A.M. and 10:00 P.M., during any consecutive ten (10) week period. The OPERATOR shall within six (6) months following a request by the CITY, subject to the restrictions above, provide another designated access channel for this purpose.

C. The OPERATOR shall continue to provide additional channels under the same conditions. Programming on additional channels shall be distinct and non-repetitive of the previous channel. If additional channels are designated for community use but after one year such channel(s) are not utilized at least twenty-five percent (25%) of the hours between 10:00 a.m. and 10:00 p.m. with programming, the access users will, within six (6) months of receiving written notice from the OPERATOR, group their programming into one contiguous block of time of their choosing. The remaining broadcast time on such channel shall then revert to the OPERATOR for its unrestricted use within the terms and conditions of this AGREEMENT.

D. PEG Support. Upon the effective date of this Addendum IV, the OPERATOR shall collect and remit to the CITY on a quarterly basis, at the same time as the franchise fee, \$0.35 per subscriber per month (the "PEG Fee") for PEG capital purposes from all subscribers paying for cable service. To the extent permitted by applicable law, the PEG Fee may be itemized on Subscriber on Subscriber billing statements. The PEG Fee shall not be treated as franchise fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from franchise fee payments made to the CITY under this franchise or applicable law.

In the event any payment required by the above paragraph

EXHIBIT 'A'

is not made on or before the required date, the OPERATOR, during the period such unpaid amount is owed, shall pay additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%). Any interest or penalties imposed hereunder shall not be treated as franchise fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from franchise fee payments made to the CITY under this franchise or applicable law.

E. Subject to applicable law, so long as OPERATOR's basic service tier is carried in an analog format, it shall continue to cablecast the City's PEG channels in both an analog and digital format. If OPERATOR opts to eliminate its analog cable service and carry PEG channels solely in a digital format, it shall maintain, at no cost to the CITY, all transmission equipment, decoders, and electronic switching necessary to transmit the CITY's PEG video signals from the CITY to OPERATOR and OPERATOR shall assume all other costs necessary to ensure that PEG signals can be transmitted on OPERATOR's digital service tier.

OPERATOR will use reasonable efforts to minimize the movement of CITY-designated PEG Channel assignments and maintain common Channel assignments for compatible PEG programming. If OPERATOR proposes to change the channel designation, for the CITY-designated PEG channel, OPERATOR will provide at least three (3) months notice to the CITY prior to implementing the change.

If OPERATOR makes changes in the System and related equipment and facilities or in signal delivery technology, which change directly cause the signal quality or transmission of PEG channel programming or PEG services to fall below technical standards under applicable law, OPERATOR shall, at its own expense, provide any necessary technical assistance, transmission equipment and provide necessary assistance so that PEG facilities may be used as intended. PEG channels shall be transmitted in the same quality and format as all other basic cable service channels.

Section V. Section 8, Institutional Networks, of the Franchise is hereby deleted. The CITY and OPERATOR have entered into a separate and independent lease agreement regarding the Institutional Network.

Section VI. Section 11, Coverage, of the Franchise is hereby amended to read as follows:

EXHIBIT 'A'

Section 11. Coverage.

The CITY shall be provided with cable television service in the entire franchise area. If such a condition does not now exist, the OPERATOR shall complete such wiring and be in a position to offer cable reception to all residents within twelve (12) months from the effective date of this AGREEMENT. Areas subsequently annexed shall be provided with cable availability within twelve (12) months of Council Approval of the annexation and written notice to the Operator Cable Service, subject to the terms in Section 13 herein.

Section VII. Section 15, Public Buildings, of the Franchise is hereby amended to read as follows:

Section 15. Public Buildings.

The OPERATOR shall provide, without charge for installation or monthly rate, basic service, one outlet, and converter, if needed, at such public buildings and schools as specified in Appendices "B" and "C" which are attached hereto and incorporated herein as well as other such buildings that may be constructed during the period of AGREEMENT that are passed by cable and within one hundred and fifty (150) feet of the trunk or distribution system.

The OPERATOR shall install and provide cable service within 180 days of the effective date of this Addendum III, at no cost to the CITY to the M&O Facility for Emergency Operation Center purposes, 1305 C Street SW, Auburn, Washington 98001. Within 180 days following construction completion, OPERATOR shall install and provide cable service at no cost to the CITY to the "Lakeland" Fire Station for Emergency Operations Center purposes, 182nd St. E. and 4th Ave. E.

Upon request through the designated CITY representative, the OPERATOR will voluntarily make available without charge, as long as the parties agree that it is economically feasible, a standard installation and a minimum of one outlet of Basic and Expanded Basic Cable Services to City administrative buildings as designated by the CITY (whether they are owned or leased), and fire station(s), police station(s), libraries, Access facilities and K-12 public School(s). The recipient of the service will secure any necessary right of entry. The Cable Service will not be used for commercial purposes, and the outlets will not be located in jail cells or areas open to the public, except for one outlet to be located in public lobbies in CITY buildings that will be used by the public for viewing. The CITY will take reasonable precautions to prevent any use of the OPERATOR's

EXHIBIT 'A'

Cable System in any manner that results in inappropriate use, loss or damage to the Cable System. If additional outlets of Cable Service are needed within such buildings, only the OPERATOR is authorized to complete the Cable Service expansion to support the outlet installation(s) and the building occupant will pay the standard installation fees; provided however, the CITY may construct and maintain additional outlets beyond OPERATOR's required outlet in accordance with OPERATOR specifications that OPERATOR will supply when requested by the CITY.

Section VIII. A new Section 24, Modification, is hereby added to the Franchise to read as follows:

Section 24, Modifications.

No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the OPERATOR, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

Section IX. A new Section 25, Competitive Equity, is hereby added to the Franchise to read as follows:

Section 25, Competitive Equity.

A. Any franchise granted pursuant to Chapter 13.36 of the Auburn City Code shall be nonexclusive and shall not preclude the CITY from granting other or further franchises or permits or preclude the CITY from using any roads, rights-of-way, streets, or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the CITY to make such changes, as the CITY shall deem necessary, including the dedication, establishment, maintenance and improvement of all new rights-of-way and thoroughfares and other public properties. The CITY reserves the right to grant one (1) or more additional franchises. The CITY shall amend a franchise, as requested by the franchisee, if it grants additional franchises or similar authorizations that contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein. A word for word identical franchise or authorization for a competitive entity is not required so long as the regulatory and financial burdens on each entity are

EXHIBIT 'A'

generally equivalent taking into account any difference in the number of subscribers served, the number of PEG channels and aggregate support provided, the level of fees and taxes imposed, the term of the franchise, and all other circumstances affecting the relative burdens.

B. Notwithstanding any provision to the contrary, at any time prior to the commencement of a franchisee's thirty-six (36) month renewal window provided by 47 U.S.C. § 546, that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the CITY, then a franchisee shall have a right to request Franchise amendments that relieve the franchisee of regulatory burdens that create a competitive disadvantage to the franchisee. In requesting amendments, the franchisee shall file a petition seeking to amend the franchise. Such petition shall: (1) indicate the presence of such wireline competitor; and (2) identify all material terms or conditions which are substantially more favorable or less burdensome to the competitive entity. The CITY shall act on the petition within 120 days.

DATED THIS _____ DAY OF _____, 2009

City of Auburn

Comcast of Washington IV, Inc.


Peter B. Lewis , Mayor

By:
Its:

Attest:

By: _____
Danielle E. Daskam. City Clerk

APPROVED AS TO FORM:



Daniel B. Heid ,
City Attorney

RESOLUTION NO. 4 5 3 1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN INSTITUTIONAL NETWORK LEASE AGREEMENT BETWEEN THE CITY OF AUBURN AND COMCAST OF WASHINGTON IV, INC. AND COMCAST OF CALIFORNIA/COLORADO/WASHINGTON I, INC.

WHEREAS, TCI Cablevision of Washington, Inc. ("TCI") and the City entered into a franchise agreement, through Resolution No. 2409, on May 3, 1993 (the "Franchise Agreement"), which became effective on July 1, 1993; and

WHEREAS, pursuant to the terms of the Franchise Agreement, a cable system upgrade, including a bi-directional I-Net was to be completed by September 13, 1997; and

WHEREAS, TCI was not able to upgrade the cable system as required by the Franchise Agreement, which subjected TCI to significant penalties; and

WHEREAS, TCI and the City negotiated a Franchise Extension Agreement which granted a 24-month extension of the deadline to meet its obligations and in exchange TCI agreed in part to install a fiber-optic institutional network (the "I-Net") for the City's sole use; and

WHEREAS, the Franchise Extension Agreement was heard by the City's Committee of the Whole and approved by the City Council through Resolution No. 2972 on June 15, 1998 and accepted by TCI on July 13, 1998; and

WHEREAS, the I-Net was initially completed in or about 1999; and

WHEREAS, Comcast now holds the Franchise Agreement and a dispute between Comcast and the City has arisen over the ownership of the TCI-constructed I-Net, which the parties desire to amicably resolve.

WHEREAS, the City Council finds that the terms set forth in the attached Institutional Network Lease Agreement are in the best interest of the City and its citizens,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, HEREBY RESOLVES as follows:

Section 1. The Mayor and City Clerk of the City of Auburn, Washington, are hereby authorized to execute an Institutional Network Lease Agreement Between the City of Auburn and Comcast of Washington IV, Inc. and Comcast of California/Colorado/Washington I, Inc., a copy of which is attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2009.

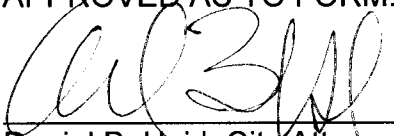
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

EXHIBIT 'A'

Institutional Network Lease Agreement

This Institutional Network Lease Agreement (the "Lease Agreement") is entered into this _____ day of _____, 2010, by and between the City of Auburn, Washington (the "City") and Comcast of Washington IV, Inc. & Comcast of California/Colorado/Washington I, Inc. ("Comcast").

RECITALS

WHEREAS, TCI Cablevision of Washington, Inc. ("TCI") and the City entered into a franchise agreement, through Resolution No. 2409, on May 3, 1993 (the "Franchise Agreement"), which became effective on July 1, 1993; and

WHEREAS, pursuant to the terms of the Franchise Agreement, a cable system upgrade, including a bi-directional I-Net was to be completed by September 13, 1997; and

WHEREAS, TCI was not able to upgrade the cable system as required by the Franchise Agreement, which subjected TCI to significant penalties; and

WHEREAS, TCI and the City negotiated a Franchise Extension Agreement which granted a 24-month extension of the deadline to meet its obligations and in exchange TCI agreed in part to install a fiber-optic institutional network (the "I-Net") for the City's sole use; and

WHEREAS, the Franchise Extension Agreement was heard by the City's Committee of the Whole and approved by the City Council through Resolution No. 2972 on June 15, 1998 and accepted by TCI on July 13, 1998; and

WHEREAS, the I-Net was initially completed in or about 1999 [NOTE: VERIFY DATE]; and

WHEREAS, Comcast now holds the Franchise Agreement and a dispute between Comcast and the City has arisen over the ownership of the TCI-constructed I-Net, which the parties desire to amicably resolve.

NOW THEREFORE, in consideration of the foregoing, and of the promises and covenants contained in this Lease Agreement, the parties agree as follows:

Lease

1. **Lease of Institutional Network**. Subject to the terms and conditions of this Lease Agreement, Comcast hereby leases to the City the "Institutional Network" (I-Net) as described on Exhibit A, attached hereto and incorporated herewith. This Lease Agreement is freely and voluntarily entered into by the

EXHIBIT 'A'

Parties, without any duress or coercion, and after each party has consulted with its counsel. Each party hereto has carefully and completely read all of the terms and provisions of this Lease Agreement.

2. Lease Term. The lease shall commence upon the full execution of the Lease Agreement by the City and Comcast and shall terminate on December 31, 2058. Unless either party notifies the other prior to the end of the Lease Agreement term, this Lease Agreement shall be renewed automatically for additional subsequent 5-year terms under the same terms and conditions contained herein.

3. Payments. The City shall pay Comcast \$1.00 per year for 50 years commencing upon the effective date of this agreement, for the use and maintenance of the Institutional Network. The Parties agree that this Lease Agreement is not a cable franchising obligation and payments set forth in this Lease Agreement shall not be treated as franchise fees for purposes of 47 U.S.C. § 542, and shall at no time be offset against or deducted from franchise fee payments made to the City under their current Franchise or any renewed franchise.

4. Use of I-Net.

4.1 Upon the effective date, the City shall have sole exclusive use of all I-Net facilities, equipment and capacity outside the physical site termination panels and shall only use the I-Net for non-commercial uses.

4.2 For the purposes of this Lease Agreement, non-commercial means internal network communications from and among government agencies, schools, libraries and other public agencies, which subject to other limitations herein, includes encrypted wireless, internet, telecommunications, information, voice, video and data services. Unless otherwise agreed upon by Comcast and the City, noncommercial internal network communications excludes any other uses, such as the sub-leasing, gifting, or reselling I-Net capacity to a third party for any purpose.

4.3 Unless mutually agreed upon by the City, Comcast may not utilize unused capacity on the I-Net.

4.4 Upon request from Comcast, the City shall provide a report identifying and certifying the City's authorized non-commercial users of the I-net. Comcast shall have the right to verify the fiber connection points outside the physical site termination panels for all users on the I-net to validate the City's report. If there are discrepancies found, both parties shall use the dispute resolution procedure under this agreement to find resolve to the matter.

5. Rules and Regulations. Except as otherwise provided herein, the terms and conditions of Comcast's cable franchise, authorizing cable service within the

EXHIBIT 'A'

City, as amended and/or renewed throughout the term of this Lease Agreement, shall apply for all construction, maintenance, relocation, and safety actions.

6. Maintenance of Institutional Network. Throughout the term of this Lease, the City shall be responsible for paying Comcast's ongoing cost of maintenance for the I-Net and Comcast shall, at the City's request, perform requested maintenance to the I-Net on a time-and-materials basis. Comcast shall only perform this maintenance if first requested by the City, however, in emergency conditions, such as an emergency resulting from a windstorm or an unplanned fiber cut, Comcast is authorized, when conducting its own emergency work, to effect similar emergency repair work on the I-Net, and the City will reimburse Comcast for its expenses, based on time and materials, to conduct these repairs to the I-Net.

7. I-Net Repair Calls and Escalation. The City acknowledges that Comcast does not actively monitor the signal transmission upon the I-Net, and has no notice of a service interruption or outages but for City-initiated notification. For any necessary repairs of the I-Net as determined by the City's authorized users, they shall notify the City's information technology ("IT") representative, who shall in turn, contact Comcast's designated local Network Operations Center (NOC). Comcast shall respond to any repair request within four (4) hours of receipt of notification at the NOC and shall actively begin working on the problem until it is resolved. In order to document the repair work on the I-Net, Comcast will use its normal trouble ticket processes. In the event of an inability to initially resolve the I-Net problems, Comcast shall follow its normal escalation procedures for correcting fiber interruptions and/or outages. At the City's request, Comcast shall also notify the City and provide documentation of the I-Net problem resolution. Such documentation shall include, among other things, a description of the cause and resolution of the problem for each I-Net trouble ticket.

8. I-Net Ownership & Electronics.

8.1 The City agrees that Comcast has clear and unencumbered title to the I-Net outside the physical site termination panels.

8.2 Comcast shall be responsible for supplying and installing the I-Net and associated facilities and equipment, to the specified site termination panels only, thereby providing a pathway for I-Net communications between all sites.

8.3 The City shall be responsible for providing any "active" equipment or components required for I-Net use, including but not limited to computers, network cards, optronics, electronics, and equipment racks, at the City's sole expense.

8.4 The City may not access any part of the I-Net and associated facilities and equipment outside the site termination panels, and the City's permitted access

EXHIBIT 'A'

shall in no event extend beyond the City's side of the termination panel. The City shall not attach any equipment or otherwise modify the I-Net in any way that will interfere with the signal quality and the normal operation of Comcast's cable system. Except as provided in this Lease Agreement, Comcast shall not interfere with the signal quality and the normal operation of the I-Net.

9. Modify, Splicing and Attachment. The City may, using the existing I-Net capacity and at its cost, request Comcast modify, splice into, or attach to, the I-Net, outside the site termination panels/demark, to connect to additional City-authorized facilities. Comcast agrees to cooperate with the City to accomplish any modification, splicing or attachments to the I-Net.

10. Relocation. When electric and telephone utility wiring in an area of the City are relocated underground, Comcast shall be responsible for relocating the I-Net at the same time it places its cable facilities underground.

11. Indemnification.

11.1 Subject to Washington Statutes, municipal limits on liability and all immunities the City may enjoy, including the limitation of payment to only those liabilities that the City would have if it was acting by itself and could assert all of its immunities, the City shall indemnify and hold harmless Comcast, its employees, officers and directors, and its Affiliates and employees, officers and directors thereof, from any liability (including reasonable attorneys' fees) for damages arising out of, or resulting from, the City's use of the Institutional Network, or from the use by any Person authorized by the City to use the Institutional Network.

11.2 Comcast shall indemnify, defend and hold harmless the City, and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents from and against all liability (including reasonable attorneys' fees), damages and penalties which they may legally be required to pay as a result of: (i) Comcast's performance under this Agreement; and (ii) Comcast's unauthorized transmission of a signal over either of the Institutional Network, or as a result of Comcast's unauthorized modification of City signals or signals transmitted by Authorized Users.

12. Successors and Assigns. This Lease Agreement, and the terms, covenants, warranties and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective authorized heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. Unless otherwise expressly stated herein, nothing in this Agreement shall be construed as an authorization or right of any party to transfer or assign its rights in or delegate its duties under this Agreement without the prior written consent of the other party, except that any consent of the City to the transfer or

EXHIBIT 'A'

change of control of the Franchise Ordinance shall be deemed a consent to the transfer or assignment of this Agreement.

13. Notice. Unless otherwise agreed to by the parties, any notice provided for under this Lease Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

(a) Notices to Comcast shall be mailed to:

Comcast
4020 Auburn Way N
Auburn, WA 98002
Attention: Director, Franchising and Government Affairs

With a non-binding courtesy copy to:

Comcast
15815 25th Ave W
Lynnwood, WA 98087
Attention: Franchising and Government Affairs

(b) Notices to the City shall be mailed to:

Lorrie Rempher
City of Auburn
Auburn City Hall
25 W. Main Street
Auburn, WA 98001

with a copy to:

Auburn City Clerk
City of Auburn
Auburn City Hall
25 W. Main Street
Auburn, WA 98001

(c) Upon request by the City, Comcast shall provide a list of individual(s) contacts associated with the upkeep of the I-Net.

14. Counterparts. This Lease Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument; and in pleading or proving any provision of this Lease Agreement, it shall not be necessary to produce more than one complete set of such counterparts.

EXHIBIT 'A'

15. Captions. All headings contained in this Lease Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of the Lease Agreement. Whenever used herein the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

16. Governing Law and Binding Effect. This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Washington. This Agreement shall bind and inure to the benefit of each of the parties and their successors and permitted assigns. Comcast will not take any action to challenge any provision of this Lease Agreement as contrary to law or unenforceable at any time.

17. Waivers and Amendments. This Lease Agreement may not be amended nor shall any waiver, change, modification, consent or discharge be effected, except by an instrument in writing adopted, in the case of an amendment, by each party and, in the case of a waiver, consent or discharge, executed by the party against whom enforcement of such instrument is sought. Any consent by either party to, or waiver of, a breach by the other party shall not constitute a waiver or consent to any subsequent or different breach. If either party shall fail to enforce a breach or this Lease Agreement by the other party, such failure to enforce shall not be considered a consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

18. No Third Party Beneficiaries. For purposes of this Lease Agreement, including its intended operation and effect, the parties specifically agree and contract that: (1) the Agreement only affects matters/disputes between the parties to this Lease Agreement and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in a contractual relationship with the City or Comcast, or both; and (2) the terms of this Lease Agreement are not intended to release, either by contract or by operation of law, any third person or entity from obligations owed by them to either the City or Comcast.

19. Entire Agreement. This Lease Agreement, including the recitals and schedule herein, contains the entire agreement of the parties and supersedes all other agreements, oral or written, heretofore made with respect to the subject matter hereof and the transactions contemplated hereby.

20. Recitals. The recitals herein are incorporated by reference into this Lease Agreement and are made a part hereof.

21. Assignment. This Lease Agreement and any rights or duties hereunder shall not be assigned by either party without the express written consent of the other party, unless assigned to a parent, affiliate, or subsidiary company.

EXHIBIT 'A'

22. Binding on Successors. Except as otherwise provided herein, this Lease Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

23. Severability. In the event any one (1) or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and shall remain in effect and binding upon the parties, unless such change materially alters either parties ability to perform the material obligations of this Agreement, in which case the parties hereto shall negotiate in good faith to modify this Lease Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

24. Force Majeure. Neither party shall be liable for any failure of performance (including any delay in restoration of service) hereunder due to causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, storm, or other similar catastrophes; any law, order, regulation, direction, decision, action or request of the United States government or the State of Washington; insurrection; riots or other civil disturbances; or wars.

25. Dispute Resolution. In the event one party to this agreement believes there has been a breach by the other party, the non-offending party shall notify the other party in writing with specific details regarding the exact nature of the alleged breach. The offending party shall have the opportunity to respond to the accusation or cure the alleged breach within 30 days following the receipt of the notice. If the offending party contests any part of the alleged breach set forth in the notice, the parties shall meet to discuss the dispute or submit the matter to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. The parties shall have 60 days to resolve the dispute and in the event that resolution is unsuccessful, the parties shall submit the matter to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Either party may appeal the arbitration award as allowed by law.

26. Termination. The City in its sole discretion may terminate this Lease Agreement, by notice given in the manner contained herein.

27. Relation to Franchise. This Lease Agreement is separate and apart from any renewed cable franchise and this Lease Agreement shall supersede any I-Net obligations in the existing franchise and there shall be no I-Net obligation in a renewed franchise through 2058.

28. Reopeners.

28.1 Grounds. The occurrence of any of the following shall be grounds for the City or Comcast to reopen this Lease Agreement:

EXHIBIT 'A'

(a) Any court action that invalidates or substantially negates the effect of any material provision of this Lease Agreement.

(b) Any state or federal legislation that invalidates or substantially negates the effect of any material provision of this Lease Agreement.

28.2 Reopener Procedure.

(a) The City or Comcast shall make a determination that grounds exist to implement the reopener provisions of this section and shall formally notify the other party in writing and in reasonable detail of that determination, the grounds for it, and the proposed modification deemed necessary to address the event giving rise to the reopener.

(b) For a period of ninety (90) days following receipt of the notice, Comcast and the City shall seek to negotiate an amendment to the Lease Agreement reflecting the grounds identified in notice of reopener.

(c) If Comcast and the City are unable to reach agreement within the ninety (90) day period, the matter may be submitted to mediation, using the mediation procedure set forth in Section 25. If mediation does not resolve the issue, then the parties shall seek direct judicial resolution.

29. Periodic Evaluation. Every three years during the term of this Lease Agreement either party may require evaluation session(s) upon thirty (30) days written notice to the other party. Topics which may be discussed at any evaluation session may include, but are not limited to, the use and maintenance of the I-Net, application of new technologies, system performance, facilities and support, amendments to this Lease Agreement, judicial rulings, legislation, and any other topics that are relevant to the I-Net. As a result of a periodic review or evaluation session(s), upon notification from either party, both parties shall meet and undertake good faith efforts to reach mutual agreement on proposed amendments to the terms and conditions of this Lease Agreement. If mutual agreement is obtained, both parties shall amend this agreement as allowed under Section 17.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

City of Auburn

Comcast of Washington IV, Inc.

Peter B. Lewis , Mayor

By:
Its:

EXHIBIT 'A'


Attest:

**Comcast of California/
Colorado/Washington I, Inc.**

Danielle E. Daskam. City Clerk

By:
Its:

APPROVED AS TO FORM:



Daniel B. Heid ,
City Attorney